January 1730.

Additional CONDESCENDENCE *of* INSTANCES,

FOR

SIMON Lord *FRASER* of LOVAT, in the higher Rank and Dignity of Earls, &c. Shewing, when the Succeſſion came to ſplit and divide, in theſe noble Families that had no Patents directing to what Series of Heirs the Dignity was to deſcend, it went uniformly to Heirs-male, in excluſion of Heirs of Line; unleſs there was ſome Act and Deed of the Sovereign, altering the Deſcent of the Honour from Heirs-male to Heirs female.

IN ſtating the Condeſcendence for *Simon* Lord *Fraſer* of *Lovat*, in the higher Dignities, we muſt neceſſarily diſtinguiſh the Earls into two Periods; the firſt from the earlieſt Times, till the Reign of King *Robert* the *Bruce*; and from that Period down to later Times. In that firſt Period we had but few Earldoms, not above twelve all the Kingdom over, and theſe had been erected according to the Common Law of *Scotland* at the Time. The Lord *Lovat* does not aſſert, that when the Male Succeſſors of all theſe noble Feus became extinct, the Fee itſelf might not at laſt devolve on the Heir-female. The Lord *Lovat* indeed refuſes, that the Huſband of that Heir-female was, in the Right of Courteſy, or in virtue of his Marriage, Earl of his Wife's Dignity, or was he ever *Comes* till dubbed, and received by ſome Deed or other of the Sovereign making him

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him Earl. And if this *Inveſting*, *Cincture*, *Belting*, or whatever other requiſite Solemnity was not obtained, the Huſband was never Earl, or any more than *dominus comitatus*. For what Authorities are adduced by the Defender for vouching theſe Facts in his Condeſcendence, they are at beſt but the Gueſſes and Conjectures of remote Hiſtorians, that can be but very little depended on, conſidering what Errors and Miſtakes theſe Authors have fallen into, in Matters of the higheſt Conſequence to the Deſcent of the Crown, and the Succeſſion of the Royal Line. Theſe Facts are ſo well known, they cannot be refuſed.

As to the ſecond Period, ſince the Reign of King *Robert* I. we have many Erection-charters of Earldoms extant, which, the Lord *Lovat* can confidently affirm, are all generally granted (at leaſt a very few excepted) either to Heirs-male of the firſt Patentee or Grantee's own Body, to his collateral Heirs-male, or *hæredibus*, in general *to Heirs*, which our Practice at leaſt has conſtructed to be Heirs-male in ſeveral Inſtances that are mentioned, partly in the Lord *Lovat*'s printed Anſwers to the Condeſcendence brought by the Defender, in the Rank and Quality of Earls, for eſtabliſhing his own pretended Title to the Peerage of the Family of *Lovat*; but more fully in the Lord *Lovat*'s own Condeſcendence of Inſtances in theſe higher Dignities, now put into the Lords hands, together with his Information, where the whole of his Caſe, and his Right to the Dignity he claims as Heir-male, are fully ſet forth.

Upon the Whole, we can venture to ſay, that all antient Dignities of Earldoms went uniformly to Heirs-male, in excluſion of Heirs of Line, whilſt the Heirs-male exiſted; unleſs the then Proprietor of the Earldom, with the Conſent and Approbation of the Crown, altered the Succeſſion to another Series of Heirs; as in the Caſe of the Earldom of *Roſs*, and ſome others which could be mentioned: For if the Daughter of *William* Earl of *Roſs* could have ſucceeded to the Earldom, in excluſion of her Father's Brother, *Hugh Roſs* of *Balnagown*, the Heir-Male, as Heir to her Predeceſſors,

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ſors, what Neceſſity was there for the Father to reſign the Earldom in open Parliament in the Sovereign's Hands, in favours of his Daughter? So that, from this very Inſtance, 'tis plain, that all antient Dignities of Earldoms went to Heirs-male, in Excluſion of Females; unleſs, as we have ſaid, there was ſome Deed of the Sovereign, who is the Fountain of Honour, altering the Succeſſion from Males, and ſettling the Honour and Dignity upon a female Heir, which alters the Caſe, and puts all ſuch Inſtances out of the preſent Queſtion betwixt the Lord *Lovat* and the Defender.

Earl of DOUGLAS.

The firſt Inſtance the Lord *Lovat* ſhall produce, is in the illuſtrious Family of *Douglas*. This noble, antient Family was firſt raiſed to the Honour of Earl of *Douglas*, by King *David* II. in the Perſon of *William de Douglas*, deſigned *Dominus de Douglas*, and *Dominus ejuſdem loci*, in the 1358, by Inveſtiture, and the other uſual Rites of Creation then uſed. *William*, the ſixth Earl of *Douglas*, was executed upon the Mote of the Caſtle-hill at *Edinburgh*, during the Miniſtry of the Lord *Crichton*, in the Minority of King *James* II. on the 24th of *November* 1440; and although he left a Siſter, Lady *Margaret Douglas*, who was afterwards Counteſs of *Athole*, yet the Honour, Title, and Dignity of Earl of *Douglas* devolved on *James* Earl of *Avandale*, his Grandfather's Brother, Father to *William* and *James*, the laſt Earls of *Douglas*. This is vouched and inſtructed, 1*mo*, From the *Fœdera Angliæ ad Annum* 1353, where that Year *Willielmus Dominus de Douglas* is ſo deſigned; and in another Tranſaction the ſame Year, we find him called *Comes de Douglas*. 2*do*, From a Charter under the Great Seal, in the Records, Book 4th, *Charta* 105, of the Gift of the Ward and Marriage of Lady *Margaret Douglas*, the Heir of Line, Daughter to *Archibald* Earl of *Douglas*, to *William* then Earl of *Douglas* and *Avandale*, Son of *James* Earl of *Douglas*, the Heir-male. *Sciatis*, ſays the Sovereign, *quod conceſſimus*,

coram

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coram tribus noſtri regni ſtatibus, in pleno parliamento noſtro tento apud Edinburgh, cariſſimo conſanguineo noſtro, Willielmo comiti de Douglas & Avandale, & ſuis aſſignatis, pro ſuo fideli ſervitio nobis impenſo & impendendo, maritagium Margaretæ de Douglas, filiæ quondam Archibaldi comitis de Douglas, cum univerſis & ſingulis terris, redditibus, firmis & poſſeſſionibus, quæ ad maritagium ipſius juſte ſecundum leges regni debent pertinere. Datum undecimo die Februarii 1449. 3*tio*, This Inſtance is vouched from Mr. *Hume*'s Hiſtory of the Houſe of *Douglas*, publiſhed in the 1644, and from the Peerage of *Scotland*, Article *Duke* of *Douglas*, Page 98.

Earl of ANGUS.

The Earldom of *Angus* was firſt eſtabliſhed in the Line of the *Douglaſſes*, in the Perſon of *George Douglas*, Son to Dame *Margaret Stewart*, Counteſs of *Mar* and *Angus*, by Inveſtiture, in the 1398, nine Years after he was in the Fee of the Earldom. This is vouched from three ſeveral Writs, in the hands of his Grace the Duke of *Douglas*; the firſt is a Charter under the Great Seal, of the Earldom of *Angus*, by King *Robert* II. to *George Douglas*, on the Reſignation of *Margaret* Counteſs of *Mar* and *Angus*, dated the 9th of *April* 1389, mentioned in the Peerage of *Scotland*, Page 100. There is alſo another original Contract, or Marriage-articles in the *Scots* Language, dated at *Edinburgh* the 24th Day of *May*, in the 1397, betwixt King *Robert* III. and *Margaret* Counteſs of *Mar* and *Angus*, whereby her Son *George Douglas*, Lord of *Angus*, as he is called, was to marry the Lady *Mary*, the King's Daughter. And there is a third Writ, in his Grace's Cuſtody, which, together with many other Charters of the Family of *Douglas*, the Author of the Peerage had in his hands, *viz.* a Charter under the Great Seal of King *Robert* III. *Dilecto filio noſtro Georgio comiti Anguſiæ, & Mariæ ſponſæ ſuæ, filiæ noſtra cariſſimæ*, dated the 8th of *November* 1398: So that he has been inveſted in the Earldom at the Solemnity of his Mar-

 riage.

riage. He died in 1402; and that the Lady his Mother ſurvived him, is evident from an Indenture or a Writing in the Cuſtody of the Marquis of *Tweddale*, *Anno* 1410, whereby *Margaret* Counteſs of *Mar* and *Angus*, contracts to marry *William* Earl of *Angus* her Grandſon to *Margaret* Daughter of Sir *William Hay* of *Locheruart* Knight. In theſe Facts, the learned and ingenious Mr. *Hume* the Hiſtoriographer of the Houſe of *Douglas*, concurs with the Author of the Peerage. From this *George* Earl of *Angus*, the Male-line of the Family was carried down without any Interruption, till the Reign of Queen *Mary*, that *Archibald* the great Earl of *Angus*, by *Margaret* Queen Dowager of *Scotland* his Wife, Daughter of *Henry* VII. of *England*, left only one Daughter, the Lady *Margaret Douglas*, who was Counteſs of *Lennox*, Mother to *Henry* Lord *Darnly*, Father to King *James* VI. Yet upon his Death, in the 1557, he was ſucceeded in the Title, Honour and Dignity, not by his Daughter, but by his Nephew *David Douglas* of *Pittendreich*. This Inſtance is vouched, 1*mo*, From the concurrent Teſtimony of every *Britiſh* Hiſtorian, *Engliſh* and *Scots*, for the Marriage of the Queen Dowager of *Scotland* with the Earl of *Angus*, as *Buchanan*, *Leſley*, *Drummond*, *Camden*, *Hume*, &c. 2*do*, From the *Fœdera Angliæ*, Tom. XV. Page 29, where the learned Publiſher Mr. *Rymer* has obliged us with the Marriage Articles, betwixt *Matthew* Earl of *Lennox* and the Lady *Margaret Douglas*, who was Niece to King *Henry* VIII. of *England*, who is a Party-contractor for her. The Contract is dated the 26th of *June* 1544. 3*tio*, From the Inſcription on her Funeral Monument in the Abbey-Church of *Weſtminſter*, mentioned by *Sandford*, in his Genealogical Hiſtory of the Kings of *England*, where ſhe is deſigned Daughter and Heir to *Archibald* Earl of *Angus*, by *Margaret* Queen of *Scots*, his Wife; and ſhe herſelf is called Wife to *Matthew* Earl of *Lennox*, Niece to King *Henry* VIII. and Grandmother to King *James* VI. 4*to*, From Mr. *Hume*'s Hiſtory of the *Douglaſſes*, where he remarks the Splitting of the Family of *Angus* at this Time,

betwixt *David Douglas* of *Pittendreich* the Heir-male, who ſucceeded his Uncle in the Honour of Earl of *Angus*, and the Lady *Margaret Douglas*, the Counteſs of *Lennox*, the Heir of Line.

DITTO.

Archibald Earl of *Angus*, Son of *David* Earl of *Angus*, died without Iſſue-male in the Month of *July* 1588; and although he left two Siſters, *Margaret* Lady *Buccleugh*, and *Elizabeth* Lady *Maxwell*, yet the Honour, Title and Dignity of the Houſe of *Angus*, went to a remote Heir-male, Sir *William Douglas* of *Glenbervy*. This Fact is ſo well known, that we need ſcarce go to the Records to vouch it, for it will not be refuſed by the Defender; but if it ſhould be diſputed, we have proper Vouchers at hand, that will ſupport it, to the Conviction of every impartial Man, if Mr. *Hume*'s Authority in his Hiſtory of the Family of *Douglas*, and Archbiſhop *Spotiſwood*'s Church-hiſtory, who were Cotemporaries with this Earl, will not be relied on, upon whoſe Demiſe the Family went to an Heir-male, in excluſion of an Heir of Line.

Earl of CAITHNESS.

In the Reign of King *James* III. *William* Earl of *Caithneſs* reſigned the Fee of the Earldom of *Caithneſs*, in favours of *William Sinclair* his Son, by *Marjory Sutherland* Counteſs of *Caithneſs* his Wife, to be held of the Crown by the ſaid *William & hæredibus ſuis*. After the Death of the Earl his Father, *he was inveſted in the Honour*, and is marked as *comes de Caithneſs* in the Records of Parliament 1504. From this Earl the Male-line of the Family held on till the 1676, that *George* Earl of *Caithneſs* died without Iſſue. This Earl having alienated his Eſtate to *John Campbell* of *Glenorchy*, he was upon that created Earl of *Caithneſs* in the 1677; but the Heir-male *George Sinclair*, Son to Mr. *Francis Sinclair*, Uncle to the laſt Earl *George*, claiming the Title, the Honour was allowed

allowed him, and he took his Seat in Parliament accordingly, *Anno* 1681. This Earl died without Iſſue *Anno* 1698; and although he had a Siſter, Dame *Jean Sinclair*, who was married to Sir *James Sinclair* of *May*, yet his Heir male *John Sinclair* of *Murthill* ſucceeded to the Honour, Title and Dignity of this noble Family, and was Father of *Alexander* the preſent Earl of *Caithneſs*. This Inſtance is vouched, 1*mo*, From the Charter of Reſignation of the Earldom of *Caithneſs*, by Earl *William*, in favours of his Son, in the Regiſters of the Great Seal, Book 8. *Charta* 361, dated the 7th of *December* 1476. 2*do*, From the Rolls and Regiſters of Parliament in the public Archives, where he is marked *Comes de Caithneſs* in the 1504. 3*tio*, From the Letters-patent under the Great Seal in the Chancery, creating *Glenorchy* Earl of *Caithneſs*. The Exiſtence of the Heir of Line is ſo well known, that it will not be controverted by the Defender.

Earl of CRAWFORD.

The noble and illuſtrious Family of *Lindſay* were not in the Rank and Quality of Earls till the Reign of King *Robert* III. that Sir *David Lindſay* of *Crawford* was, with great Ceremony and Solemnity, created and inveſted Earl of *Crawford*, in a Parliament held at *Scoon*, the 21ſt of *April Anno* 1399. The maſculine Line of this noble Family continued down without any Interruption, till the 1513, that *John* Earl of *Crawford* was ſlain at the Field of *Flowdoun*, with King *James* IV. leaving no Iſſue: And notwithſtanding that he had a Siſter, Lady *Margaret Lindſay*, who was married to one Mr. *Blair*, yet his Uncle, *Alexander Lindſay* of *Achtermonſey*, ſucceeded in the Honour and Dignity of Earl of *Crawford*. The Vouchers of this Inſtance are, 1*mo*, *Fordon's Continuator*, who ſays, *Viceſimo primo die* Aprilis, *anno* 1399, Robertus *Rex celebravit magnum concilium apud* Scoon, *ubi* David *de* Lindſay *factus fuit comes* Crawfordiæ. So that it is plain, from the Words of this Author, he has been inveſted in Parliament. 2*do*, From a Charter in the Regiſters of

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the Great Seal of King *James* V. *Book* 21. *Charta* 45. ratifying and confirming an Agreement betwixt *David* Earl of *Crawford*, Heir-male and Succeſſor to *John* Earl of *Crawford*, and *Alexander Blair*, the Heir of Line, Son to *Margaret Lindſay*, Siſter to *John* Earl of *Crawford*, anent any Right, Claim or Title he had to the Eſtate of the Earldom of *Crawford*. In the Writ the Earl is deſigned, *David comes Crawfordiæ, filius & hæres quondam Alexandri comitis Crawfordiæ, necnon hæres & ſucceſſor quondam Johannis comitis Crawfordiæ.* And the Heir of Line is called *Alexander Blair, filius & hæres quondam Margaretæ Lindſay, filiæ quondam Davidis ducis de Montroſe, & comitis Crawfordiæ.* By this Agreement, the Earl gives to Mr. *Blair* the Lands of *Pottento* and *Balmyle*, in the Barony of *Meigle* in *Perth*-Shire, for a certain Sum of Money, which he there diſcharges, *Necnon pro extinctione cujuſdam preſentis litis, motæ per dictam quondam Margaretam, contra Alexandrum comitem Crawfordiæ, patruum & hæredem dicti quondam Johannis comitis Crawfordiæ, et poſt ipſius deceſſum, contra nos motam, penes omnes & ſingulas terras comitatus ſive dominii Crawfordiæ, & in plenariam recompenſationem juris, tituli & clameii hæreditarii, quos dicta* Margareta, *ſeu præfatus Alexander ejus filius, habuit, habet, ſeu quovis modo habere vel clamare poterit, in et ad comitatum & dominium Crawfordiæ antedictum.* This Contract of Agreement bears Date at *Edinburgh*, the 25th of *February*, *Anno* 1518.

Earl of ERROL.

This noble Family was firſt raiſed to the Rank and Quality of Earls of *Errol*, by King *James* II. in the Perſon of *William* Lord *Hay*, High Conſtable of *Scotland*, in the 1455. *Nicol* Earl of *Errol* his Son, had *William* the Heir of his Dignity, and *Thomas Hay* of *Logiealmond*. His Lineal Heir, another *William* Earl of *Errol*, died without Iſſue-male, *Anno* 1541, and left only one Daughter, Lady *Jean Hay*, who became the Wife of *Andrew* Earl of *Errol*. She did not ſucceed her Father in the Dignity of the Houſe of *Errol*, but his Heir-male, her Father's Couſin-German,

George

George Hay of *Logiealmond.* The Authorities of this Inſtance are theſe following: 1*mo*, There is a Charter granted by King *James* II. in the Regiſters of the Great Seal, in the 1452, in which *Willielmus dominus Hay, conſtabularius regni noſtri*, is a Witneſs, but not *comes*. There is another Charter under the Great Seal, of the Date the 24th of *February* 1455, in which *Willielmus comes de Errol, conſtabularius*, is a Witneſs; ſo that he has been inveſted in the Honour betwixt the 1452, and the 1455. 2*do*, There is a Charter under the Great Seal, Book 13th, *Chart.* 53. *Thomæ Hay, filio Willielmi comitis de Errol, & Margaretæ Logie, ſponſæ ſuæ, dominæ de Logiealmond*, of the Lands and Barony of *Logiealmond*, dated the 4th of *October* 1493. 3*tio*, There is a Charter under the Great Seal, Book 22d, *Charta* 205, by King *James* V. to *George Hay* of *Logiealmond*, as Heir-male to *William* Earl of *Errol*, of the Eſtate, and heretable Office of Conſtabulary, upon the Narrative, That the King was deſirous, that the Family, and the heretable Office of the Conſtabulary, ſhould remain and continue *hæredibus maſculis, cum cognominibus de Hay, in omnibus temporibus futuris, prout fuerunt in temporibus elapſis.* The Charter is dated 13th of *December* 1541. The Heir of Line, the Earl's Daughter, had no Title either to the Eſtate, or the Honour of the Family; tho' 'tis obſervable, that the original Grant and Patent of the Conſtabulary was given by King *Robert* I. to Sir *Gilbert Hay*, & *hæredibus ſuis*, ſimply, without the Adjection of *maſculis*; but it ſeems, as in this, and many other Inſtances, it was underſtood of Males, excluſive of Females, altho' it was only *hæredibus* in general. 4*to*, There is a Charter in the Records of the Great Seal, in the 1555, *Andreæ Magiſtro Erroliæ, filio & hæredi apparenti Georgio comitis de Errol, & Jeannæ Hay ejus conjugi.* And, 5*to*, There is in the Regiſters of the Privy Seal, Book beginning 1561, and ending 1563, a Confirmation by the Queen of a Right of Reverſion to the ſixth Part of the Lands of *Claſbenny*, formerly wadſet by *William* Earl of *Errol*, to —— *Rollock*, Relict of Mr. *James Kid* Burgeſs of *Dundee*.

Jeannæ

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Jeannæ magiſtræ de Errol, conſanguineæ noſtræ, ſponſæ Andreæ magiſtri de Errol, nepti & hæredi lineæ *quondam Willielmi comitis de Errol*, her Grandfather, dated the 2d of *June* 1562. This is the Lady, the Heir of Line; but no Dignity is claimed by her, no, nor the leaſt Inſinuation of any Right ſhe had to the Honours of the Houſe of *Errol*: Nor was ſhe ever Counteſs of *Errol*, for ſhe died before her Huſband's Father Earl *George*, who deceaſed in the 1574.

DITTO.

Francis Earl of *Errol*, Son of Earl *Andrew*, ſucceeded his Father in the Honour of his Family. His Grandſon *Gilbert* Earl of *Errol* died without Iſſue, in the 1674; and altho' he had a Siſter, Lady *Margaret Hay*, firſt married to *Henry* Lord *Ker*, and then to *John* Earl of *Caſſilis*, and had Iſſue in both her Marriages, yet the Heir-male, Sir *John Hay* of *Killour*, ſucceeded to the Dignity of this noble Family; whoſe Grandfather, Sir *Andrew Hay*, was the Son of *Andrew* Earl of *Errol*, by his ſecond Wife, Dame *Agnes Sinclair*, Daughter to the Earl of *Caithneſs*; ſo that he alone ſucceeded to the Honour, upon no other Title but as an Heir-male; for 'tis obſervable, he was not deſcended of Lady *Jean Hay*, his Father's firſt Lady, who was the Heir of Line of this moſt noble Family. For inſtructing this Inſtance, there is, 1*mo*, A Charter under the Great Seal, Book 35. *Charta* 869, by *Andrew* Earl of *Errol*, to *Francis* his Son, of his Eſtate, and to the Heirs-male of his Body; which failing, to the Heirs-male then procreated, or to be procreated betwixt the Earl himſelf, and Dame *Agnes Sinclair* his Wife, dated 29th of *March* 1584. 2*do*, The Article of the Peerage for the Facts, as they are ſtated, and ſo univerſally known, that they will neither be refuſed, nor cavill'd at by the Defender. 3*tio*, From a Charter under the Great Seal, to *John* Earl of *Errol*, as Heir-male to *Gilbert* Earl of *Errol*, in the Regiſters of the Chancery, the 14th of *March*, *Anno* 1674.

Earl

Earl MARISHALL.

The noble Family of *Keith*, and hereditary Mariſhall of *Scotland*, were not created Earls *Mariſhall*, till the Reign of King *James* II. that *William* Lord *Keith* was created, and inveſted in the Honour of Earl *Mariſhall*, in the 1458. From *William* the firſt Earl *Mariſhall*, the Male-line of this illuſtrious Family was never interrupted, nor did the Family ever divide betwixt an Heir-male, and an Heir of Line, till the Death of *William* Earl *Mariſhall*, who was Lord Privy Seal, from the Time of the Reſtoration of King *Charles* II. till his Death in the 1671. He left behind him four Daughters, married to the Viſcount of *Arbuthnot*, to the Lord *Bamff*, to Sir *Archibald Murray* of *Blackbarony*, and the fourth to Sir *Edward Turner*: Yet he was ſucceeded by his Brother Colonel *George Keith*. The Vouchers and Inſtructions of this Inſtance are, 1*mo*, A Charter under the Great Seal, dated the 7th of *October* 1458, to Sir *William Monipenny* of *Ardonery*, of the Barony of *Brodland* in the Shire of *Aberdeen*, wherein *Willielmus comes Mariſhall* is a Witneſs, and inſtructs he was then in the Rank of an Earl; whereas he is deſigned only *Willielmus dominus Keith*, *Mariſcallus*, in the 1456; ſo that his Creation has been by Cincture, and other uſual Solemnities of Creation. We need adduce no legal Inſtructions from Records, to vouch the Earl *Mariſhall*'s four Daughters, and the Succeſſion of his Brother Earl *George*, to the Dignity, the Thing is ſo well known; but if it were judged neceſſary, we could inſert Vouchers for every one of the Facts *ſeparatim*.

Earl of MORTON.

In the Reign of King *James* II. Sir *James Douglas* of *Dalkeith*, was, by Inveſtiture in Parliament, created Earl of *Morton* in the Year 1458, as appears from an Inſtrument, as the Cuſtom was, taken upon his Creation, by Sir *William Borthwick*

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Borthwick of that Ilk, which is in the Cuſtody of the Earl of *Morton*. To prove that he is *comes de Morton*, in the 1458 on the 7th of *October*, there is a Charter in the Regiſters of the Great Seal, to Sir *William Monipenny*, in which *Jacobus comes de Morton* is a Witneſs. There is another Charter in the Records of the Great Seal, Book 6th, *Charta* 61. by King *James* II. dated the 15th of *May* 1460, *Jacobo comiti de Morton, & Jeannæ ſponſæ ſuæ, ſorori noſtræ cariſſimæ*, of the Lands of Eaſter and Weſter *Kilbartons*, reſigned by himſelf; which ſufficiently inſtructs, when the Houſe of *Dalkeith* were raiſed to the Honour of Earl of *Morton*. *William* Earl of *Morton* died without Iſſue in the Year 1681. His Siſter, the Heir of Line, Lady *Mary Douglas*, the Lady *Macdonold* of *Slate*, did not ſucceed him in the Dignity, but his Heir-male, Sir *James Douglas* of *Smithfield*, his Uncle, who was Father to *George* the preſent Earl of *Morton*. This Inſtance is recent, and ſo fully well known throughout the whole Kingdom, that we are confident the Fact will not be refuſed by the Defender.

DUNBAR *Earl of* MURRAY.

Thomas Dunbar, Son and Heir of *John* Earl of *Murray*, died without Iſſue-male; and altho' he left a Daughter *Janet*, who was married to *Hugh Fraſer* of *Lovat*, yet he was, upon his Death, in or about the 1427, ſucceeded by his Nephew, *James Dunbar* of *Frendraught*, who was the laſt of the Line of the *Dunbars* Earls of *Murray*. This Inſtance is vouched, 1*mo*, From a Contract or Marriage-articles, in the Charter-cheſt of the Houſe of *Lovat*, betwixt *Thomas* Earl of *Murray*, and *Hugh Fraſer* of *Lovat*, anent a Marriage betwixt the Earl's Daughter, and the Heir of the Houſe of *Lovat*, of the Date, at *Elgin*, the ninth Day of *Auguſt* 1422, produced in the preſent Proceſs. 2*do*, That the Marriage took effect, is vouched from a very curious Hiſtory of the Houſe of *Lovat*, done from the Writings and Archives of the Family, where this Lady, whoſe Name was

Janet

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Janet Dunbar, is called Daughter to *Thomas* Earl of *Murray*, Wife to *Hugh Fraſer* of *Lovat*, and Mother to *Hugh* the firſt Lord *Fraſer* of *Lovat*, in the Reign of King *James* III. 3*tio*, That *James Dunbar* of *Frendraught*, Nephew to the ſaid Earl *Thomas*, was Earl of *Murray*, is agreed on by all the Writers on the Deſcent and Succeſſion of the Earls of *Murray*; as *Lindſay* of *Pitſcottie*, the Peerage of *Scotland*, and ſeveral other Collectors of the Hiſtory and Deſcent of that Earldom, that are in MSS. in the Lawyers Library, and formerly belonged to the learned Sir *Robert Sibbald*, M. D.

STUART *Earl of* MURRAY.

We have another Inſtance in the Family of the Earls of *Murray* in favours of an Heir-male. The Succeſſion in this noble Family came to divide upon the Death of *Alexander* Earl of *Murray* (who was Secretary of State both to their Majeſties King *Charles* II. and King *James* VII. and Lord High Commiſſioner to the Parliament 1686) on the 1ſt of *November* 1700. He was ſucceeded by *Charles* the preſent Earl of *Murray*, his ſecond Son and Heir-male, although there were Heirs of Line exiſting, two Daughters of *James* Lord *Down* his elder Brother.

For ſetting this Inſtance in its true Light, we muſt look back to the firſt Creation of the Earl of *Murray* the Regent, and eſtabliſhing him in the Rank and Dignity of an Earl. He was the natural Son of King *James* V. he was bred to the Church, and, while he was young, provided to the Priory of St. *Andrews*, and after that had the *Commendam* of the Priory of *Pittenweem*; under which Titles he generally went, till he was, by the ſpecial Favour of Queen *Mary* his Siſter, created an Earl. He had firſt a Grant of the Earldom of *Murray*, which was then in the Crown, by the Deceaſe of *James* Earl of *Murray*, the Queen's natural Uncle. There is a Charter in the Privy-ſeal, Book beginning 1560, and ending 1563, *Folio* 2d,

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granted by Queen *Mary*, *Prædilecto fratri noſtro Jacobo commendatorio priorat*uum *Sancti Andreæ & Pittenweem, de omnibus et ſingulis terris, & comitatu Moraviæ, & hæredibus ſuis maſculis, de corpore ſuo legitime procreandis; quibus hæredibus maſculis deficientibus nobis & ſucceſſoribus noſtris, regibus & reginis* Scotiæ *reverſuris. Penultimo die Januarii* 1561. But this Grant of the Lands and Territory of the Earldom of *Murray* did not, *ipſo facto*, make the Prior *comes Moraviæ*. Indeed, ſoon after this, *viz.* on the 7th of *February* thereafter, he had a new Grant from the Queen, *et hæredibus ſuis maſculis legitime procreatis, ſeu procreandis, de totis & integris terris & comitatu de Mar*, all united, erected and incorporated *in unum, integrum et liberum comitatum*. Then follows the Clauſe of the Creation to the Honour; *Ac ſimiliter facimus et creamus dictum Jacobum fratrem noſtrum, et hæredes ſuos maſculos, comites, omnibus temporibus futuris, de Mar vocandos; ac dando eis honorem, dignitatem, locum et votum in parliamentis, &c.* Three Days after this, as the Hiſtorian Mr. *Lindſay* of *Pitſcottie* remarks, on the 10th of *February* 1561, he was inveſted in the Honour, with the uſual Solemnities of Creation. The ingenious Author indeed is miſtaken in ſaying, That it was his Creation as Earl of *Murray*; it was plainly his Inveſtiture as Earl of *Mar*: For, upon this, we find him ſtiled, *Jacobus comes de Mar*, on the ſecond of *April* 1562, in a Grant from the Crown, of the Ward and Marriage of *Alexander Ogilvie*, Son and Heir of *Walter Ogilvie* of *Boyn*. And there is another Charter, *Jacobo comiti de Mar, et dominæ Agnetæ Keith ſponſæ ſuæ*, of the Lands of *Alathan*, reſigned by himſelf, dated the 9th of *June* 1562. He afterwards, with Conſent and Approbation of the Crown, changed the Title of Earl of *Mar* to Earl of *Murray*. There is a Charter in the Regiſters of the Privy-ſeal, to *James* Earl *Murray*, of the Ward of the Heir of *John* Earl of *Buchan*, of the Date the 22d of *September* 1563. But this Change of the Title, a Thing uſual enough, made no Sort of Alteration in his firſt Creation as an Earl; that remained entire according

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to the original Inſtitution into the Honour, which was expreſly limited to the Heirs-male of his Body, and conſequently could not deſcend to his Heir-female. The Earl having no Iſſue-male, he took care indeed to ſettle his Eſtate ſo as it ſhould deſcend to his Heirs whatſoever; wherefore he reſigned in the Queen's hands *totas & integras terras dominii et comitatus Moraviæ*; and upon that had a Charter expede under the Great Seal of *Henry* and *Mary*, King and Queen of *Scotland*, to himſelf and *Agnes Keith* his Lady, *et eorum alteri diutius viventi, & hæredibus inter ipſos legitime procreatis, ſeu procreandis; quibus deficientibus, legitimis & propinquioribus hæredibus ſeu aſſignatis dicti comitis quibuſcunque. Dat. primo die Januarii* 1566. But it is obſervable, there is no Creation or Deſtination of the Honour to the Heirs contained in the Charter of the Lands, without which it was no more than a Right and Title to the Eſtate; for the Earl's Dignity, as hath been obſerved, was originally limited *to his Heirs-male*, and ſo neither did nor could deſcend to his Daughter, who was only an Heir-portioner with her other Siſter to her Father's Eſtate, but not of his Dignity; that, by the Letters of Creation, which, as we have before obſerved, was limited to the Heirs-male of his Body, extinguiſhed with himſelf at his Death on the 23d of *January* 1570. The Earl of *Murray* the Regent left only two Daughters, Lady *Eliſabeth*, and Lady *Margaret*, who was married to *Francis* Earl of *Errol*, but died ſoon after her Marriage without any Iſſue. The Lady *Eliſabeth*, the Earl's eldeſt Daughter, was not Heir to her Father's Dignity; no, ſhe was no more, as we ſay, but an Heir-portioner with her Siſter of the Eſtate. This is clear and evident from a Gift by King *James* VI. or *a Letter*, as it is called, in the Regiſters of the Privy-ſeal, " To *James Stuart*, Son " and Heir-apparent to Sir *James Stuart* of *Down*, Knight, " and to his Heirs and Aſſigneys, of the Gift of the Ward " of all Lands, Lordſhips, Baronies, Mills, Fiſhings, Woods " and Annualrents, baith Property and Tenandry, with Te- " nends, and Service of free Tenends, whilk pertained to

" his Majeſty's deareſt Uncle, *James* Earl of *Murray*, Lord " *Abernethy*, Regent to his Highneſs, his Realm and Lieges, " for the Time, and now pertaining to our Sovereign Lord, " and become in his Highneſs's hands, by reaſon of Ward; " together with the Marriage of *Eliſabeth* and *Margaret* " *Stuarts*, Daughters and Heirs of the ſaid umquhile *James* " Earl of *Murray*." This Gift bears Date the 5th *January* 1580. which is full ten Years after the Regent's Death; and yet his eldeſt Daughter is ſo far from being deſigned Counteſs, that ſhe is no otherwiſe called in the above-mentioned Gift of Ward, but Co-heir with her younger Siſter to the Regent their Father. This Grant of the Ward to Mr. *Stuart* of *Down* was given by the King, in contemplation of his Majeſty's beſtowing the Lady his Couſin upon him in Marriage; for they were married ſoon after this, with great Solemnity, on the 29th of *January* 1581, as the learned and reverend Mr. *David Calderwood* tells us, in his excellent Collections relating to the Eccleſiaſtical Hiſtory of *Scotland*, MSS. in the Library of the College of *Glaſgow*: " *James* Earl of *Mur-* " *ray*, the good Regent, his Daughter, *ſays he*, was married to " the Lord St. *Colm*'s Son: There was nothing, *adds the re-* " *verend Author*, but running at the Ring, Juſting, and o- " ther Paſtimes in the Abbey, where the King then remain- " ed, and in Boats and Gallies at *Leith*." At this Time he muſt have been inveſted in the Honour of the Earl of *Murray* by Cincture of a Sword, and the other uſual Rites of Creation; ſince, ſo quickly after this Marriage, we find him getting the Title of Earl of *Murray*. This is vouched from a Gift by King *James* in the Regiſters of the Privy-ſeal, *Jacobo comiti Moraviæ, & Eliſabethæ Stuart ejus conjugi*, of the Eſcheat of *Archibald Douglas* Son natural to *James* Earl of *Morton*, dated the 25th of *April* 1581. His Creation having then been by Inveſtiture, the Honour flowing from him muſt, according to the uniform Cuſtom, deſcend to his Heirs-male, excluſive of his Heirs of Line; eſpecially ſince it is evident, the Deſcent of the Honour, Title and Dignity, does not flow from the Lady, who, from her Father's

Creation,

Creation, could have no Right to his Peerage, and conſequently could convey no Dignity to her Deſcendents; for we can confidently affirm, that there is not one ſingle Inſtance that can be vouched, That Lady *Eliſabeth Stuart*, the Regent's eldeſt Daughter, is ever called once Counteſs of *Murray* before her Marriage; that her Huſband is inveſted, and *de novo* honoured with the Dignity of Earl of *Murray*, and then, and never till then, ſhe is deſigned Counteſs of *Murray*, as the Wife and Conſort of an Earl. And it is to be remarked, that although *James* the third Earl of *Murray*, her Son, procured ſeveral Acts of Council and Parliament, ratifying and confirming his Grandfather the Regent's Rights and Inveſtitures of the Earldom of *Murray*; yet in all theſe Deeds there is no Conveyance, or the leaſt Mention made of the Honour to the Earl, as Heir to the Regent his Grandfather; for that he did not judge neceſſary, ſince he underſtood it was eſtabliſhed in his own Perſon, as Heir to his Father's Creation, by Cincture and Inveſtiture, and not from his Mother, who was no other than a Co-heir to her Father in his Eſtate, and at laſt his ſole Heir by the Deceaſe of the Counteſs of *Errol*, her Siſter, without Iſſue, as hath been ſaid. And nothing is more certain, than that this Earl of *Murray* underſtood it ſo himſelf: For, on the 17th of *April* 1611, he takes a new Inveſtiture of his Eſtate, the whole Earldom of *Murray*, and to the Heirs-male of his Body; which failing, to Sir *Francis Stuart* his Brother-german, and the Heirs-male of his Body, *&c.* which failing, to the Earl's Heirs and Aſſigneys whatſoever. In this Deed there is no Mention of the Honour, but only of the Eſtate, in virtue of which the preſent Earl of *Murray* ſucceeds as Heir-male, in excluſion of the Heir of Line. From what hath been ſaid to illuſtrate this noble Inſtance for an Heir-male, the Parallel then moſt evidently appears betwixt the Caſe of the Earl of *Murray* and the Lord *Lovat*; for the Lord *Lovat*'s Anceſtor was created a Lord of Parliament, not by Letters-patent, more than the Earl of *Murray*, the Regent's Son-in-law, was; but by Inveſtiture into the Dignity. As the Lord

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Lovat's Anceſtor took the Inveſtiture of his Eſtate in the 1539, to his Heirs-male preciſely, becauſe they were to be the Heirs of his Dignity; ſo did the Earl of *Murray*'s Anceſtor the like, and in the ſame View, in the 1611: And as the Heir-male of this moſt noble Family, the preſent Earl of *Murray*, ſucceeded his Father as his Heir-male; ſo, upon the ſame Footing, the Lord *Lovat*, as Heir-male to his Anceſtor, claims the Dignity and Honour of his Family, againſt the Defender, the Heir of Line.

And we may here, once for all, obſerve, That there is nothing more plain and evident in the Succeſſion of Honours and Dignities with us, than that the having a *comitatus*, a *baronia* or *dominium*, which are reciprocal Terms, did not *ipſo facto* convey the Honour, or carry the Dignity of Earl, or a Lord, along with it, even although the Perſons were of the Blood; and of which we have ſeveral very pregnant Inſtances in the Families of the Earls of *Roſs*, *Lennox*, *Fife*, *Angus*, *Buchan*, &c. all particularly ſet forth in the Anſwers made by the Lord *Lovat*, to the Inſtances adduced by the Defender, in the Rank of the Earls, in his Condeſcendence: And we ſhall here add a few more Examples of that Kind, that we are confident will ſet this Matter in ſuch a Light, as will put it beyond the Poſſibility of a Reply; for, although Sir *Archibald Douglas* of *Galloway* got the Earldom of *Wigton*, *totum et integrum comitatum de Wigton*, in the 1371, yet that did not make him *comes*, or carried the Honour along with the Territory; nor did the *comitatus de Buchan*, given to *John Stuart* of *Coule*, in the 1406, make him *comes*, or was he Earl till a conſiderable Time thereafter, that he was inveſted in the Honour; neither was *George Douglas*, *comes de Angus*, when he got the Lands of the Earldom, in the 1389, nor till nine Years thereafter; nor was *John Campbell* of *Glenorchy*, in a late Inſtance, *comes de Caithneſs*, when he acquired the Eſtate of the Earldom of *Caithneſs*, till he was, by a ſpecial Patent under the Great Seal, honoured with that Title, by King *Charles* II. on the 28th of *June* 1677. As theſe Inſtances, we are confident,

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will go very far to defeat the Notion of a territorial Honour in Earldoms; ſo it holds the ſame Way in the Dignity of the Lords of Parliament; of which we ſhall only give this one Inſtance: Sir *James Stuart* of *Killeth*, Couſin-german by the Father's Side to *Andrew* Lord *Stuart* of *Ochiltree*, having acquired the Barony and Lordſhip of *Ochiltree*, *baroniam et dominium de Ochiltree*, from his Couſin; that could not, however, of itſelf, though he was of the Blood, make him Lord, or convey the Dignity, together with the Territory of the Eſtate; no, for before he could enjoy the Title of Lord *Ochiltree*, it was neceſſary that the former Lord *Ochiltree* ſhould reſign his Honour, Title, Dignity and Stile, in the Sovereign's Hands, in his Favours alſo: Upon which there is a Charter expede under the Great Seal of King *James* VI. *in favorem domini Jacobi Stuart de Killeth, militis, et hæredibus ſuis maſculis geren. et obſervan. nomen et arma de Stuart, ex familia de Ochiltree, de omnibus et ſingulis terris dominii et baroniæ de Ochiltree, cum omnibus honoribus, titulis, dignitatibus, ſtilis, prerogativis, immunitatibus, privilegiis, et aliis libertatibus, ad idem ſpectan. quæ quidem terræ, dominium, baronia, honores, tituli, dignitates, ſtila, prærogativa, perprius pertinuerunt ad prædilectum conſanguineum noſtrum Andream dominum Ochiltree*, and were duly reſigned by him. This Charter, which is in the Regiſters of the Great Seal, in the public Archives, at *Edinburgh*, Book 47. *Charta* 470. is dated the 9th of *June* 1615.

To conclude; From the few Inſtances here adduced, and many more that are mentioned in the Lord *Lovat*'s Anſwers to the Defender's Liſt of Earls, brought as Examples for him, it is plain, the having or acquiring the Lands of an Earldom or a Lordſhip does not, of itſelf, nobilitate, or make the Purchaſer or Acquirer an Earl, or a Lord; for, if that was admitted, it would be Lands that were ennobled, and not Perſons; a Thing that was never known in this Kingdom, in one ſingle Inſtance.

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Earl of LENNOX.

Upon the Deceaſe of *Matthew* Earl of *Lennox*, who was Regent to his Grandſon King *James* VI. on the 4th of *September* 1571, the Earldom of *Lennox* devolved on the King, as Heir to his Grandfather: And his Majeſty being unwilling that the Dignity of the Houſe of *Lennox* ſhould be immerged in the Crown, and ſunk and abſorbed in the Royal Dignity, but rather that it ſhould continue in its former Luſtre; therefore he gave the Earldom of *Lennox*, *Anno* 1572, to his Uncle *Charles Stuart*, and to his Heirs and Aſſigneys: But he dying in the 1575, leaving only one Daughter, the Lady *Arabella Stuart*, who was afterward Counteſs of *Hartford*; the Earldom of *Lennox* did not go to her, but returned to the King; who, upon that, gave it *de novo* to his Grand-uncle *Robert* Prior of *St. Andrews*. This Inſtance is vouched, 1*mo*, From a Charter in the public Archives, Book 3. *Charta* 106, of the Earldom of *Lennox*, *Domino Carolo Stuart, avunculo noſtro, et hæredibus ſuis et aſſignatis*, dated the 18th of *April* 1572. 2*do*, From *Dugdale*'s Baronage of *England*, Vol. 3. Page 869. 3*tio*, From a Charter under the Great Seal, Book 35. *Charta* 8. *Roberto comiti de Lennox*, of the Earldom of *Lennox*, upon the Narrative, That the King had formerly given the Honour and Dignity of the Houſe of *Lennox* to *Charles Stuart* his Uncle, *et hæredibus ſuis, ipſo tum exiſtente proximo noſtri ſanguinis, et de quo tunc optima erat ſpes hæredes maſculos de corpore ſuo procreaturos fore; ſed tamen ipſo Carolo decedente, nullos hæredes maſculos de corpore ſuo reliquit, ob quod ſtatus dicti comitis de Levenox, in eodem ſtatu revertitur, defectu ſupremi capitis, et rectoris ejuſdem, ſicuti ante infeodationem dicti quondam domini Caroli extitit.* And then his Majeſty gives the Earldom of *Lennox* to his Grandfather's Brother, and to the Heirs-male to be procreated of his Body, 26th *June* 1578. The King indeed again revoked that Grant, and gave the Earldom of *Lennox* to his Couſin *Eſme* Lord *Aubigny*; and in lieu of the

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Title of Earl of *Lennox*, made his Grand-uncle Earl of *March*. This *Eſme* Earl of *Lennox* being the King's neareſt Relation on the Male-line, his Grandfather, *John* Lord *Aubigny*, being the immediate younger Brother of *Matthew* Earl of *Lennox*, the King's Grandfather, he quickly roſe to a very high Degree of Favour, and was created Duke of *Lennox*, by ſolemn Inveſtiture. For vouching this, 4*to*, There is in the Earl of *Haddington*'s Collections from the Records, whilſt his Lordſhip was Clerk-Regiſter, an Act of Council on the 5th of *Auguſt* 1581, anent the Creation of the Earldom of *Lennox* into a *Dukery*, as it is called. The Act bears, *That he be made and created Duke of* Lennox, *Earl of* Darnly, *and Lord* Tarbolton, and to his Heirs; and yet, in Dignities where there are only Heirs in general expreſſed, is underſtood of Heirs-male, of which we have two very notable Inſtances in this illuſtrious and princely Family.

Duke of LENNOX.

Eſme Duke of *Lennox* and *Richmond*, Son and Heir of *James* Duke of *Lennox*, *&c.* died a Boy of eleven Years of Age, in *France*, the 14th of *Auguſt* 1660; and although he left a Siſter, Lady *Mary Stuart*, who was married to *Richard Butler*, Earl of *Arran* in *Ireland*, Son to *James* the firſt Duke of *Ormond*, yet he was ſucceeded by his Couſin-german, *Charles* Earl of *Litchfield*. This is vouched and inſtructed, 1*mo*, From *Dugdale*'s *Baronage of England*, *Tom.* II. *Page* 427. 2*do*, From *Sandford*'s Genealogical Hiſtory of the Kings of *England*, *Page* 399. 3*tio*, From Mr. *Dart*'s Hiſtory of the Abbey-church of *Weſtminſter*, where the Author has ſet down the Inſcription on the young Duke's Funeral Monument, bearing, that he died, *Ætatis ſuæ* 11. *menſe Auguſti* 14. *Anno ſalutis humanæ* 1660.

DITTO.

Charles Duke of *Lennox* and *Richmond*, who was hereditary Great Chamberlain of *Scotland*, and Ambaſſador Ex-

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traordinary from King *Charles* II. to the Court of *Denmark*, died at *Elſinore* in that Kingdom, on the 22d of *December* 1672, leaving no Iſſue; and although he had a Siſter, the Lady *Catharine Stuart*, who was married to *Henry* Lord *Obrian*, Son and Heir to the Earl of *Thomond*, who was his Heir of Line, yet his Majeſty King *Charles* II. ſucceeded to the Dukedom of *Lennox*, as his Heir-male, and to whom he was ſerved and retoured Heir, on the 6th of *July* 1680. This is vouched from *Dugdale*'s *Baronage* of *England*, the *Peerage of Scotland*, and from the Service and Retour of the King, as Heir-male to the Duke of *Lennox*, and of the Lady *Obrian*, as Heir of Line to her Brother, both in the Regiſters of the Chancery-Office at *Edinburgh*.

Earl of GLENCAIRN.

The noble Family of *Cuningham* was firſt raiſed to the Honour of Lord *Kilmauris*, and then of Earl of *Glencairn*, by King *James* III. in the Perſon of *Alexander* Lord *Kilmauris*, on the 10th of *May* 1488. He was ſoon after that ſlain with the King his Maſter at the Field of *Stirling*, the 11th of *June* thereafter. From this noble Earl the Line of the Family of *Glencairn* continued in the direct Male-ſucceſſion, till *Alexander* Earl of *Glencairn* died on the 26th of *May* 1670: And although he left only one Daughter, Lady *Margaret Cuningham*, who was married to *John* Earl of *Lauderdale*, and is now Counteſs Dowager of *Lauderdale*; yet her Father's Brother, *John* Earl of *Glencairn*, ſucceeded to the Honour of the Family, in excluſion of the Heir of Line, his Niece. This Example is vouched, 1*mo*, From a Charter in the Hand of *Alexander Cuningham* of *Craigends*, granted by *Alexander Dominus Kilmauris*, *Willielmo Cuningham filio ſuo*, *de omnibus & ſingulis terris de Weſter-Craigends*, *jacent*. in dominio de Ranfurlie, *infra vicecomitatum de Renfrew*. *Datum*, *apud Kilmauris*, *quarto die menſis Februarii*, 1478. 2*do*, From a Charter under the Great Seal of King *Charles* I. Book 35. *Charta* 354. dated the 21ſt of *July* 1637, entituled, *Litera ratificationis diplomatis*, *quondam Alexandri comitis de Glencairn*, *de titulo*,

titulo, honore & dignitate comitis de Glencairn. It proceeds upon this Narrative; *Quia nos compertum habentes, quod quondam noſter illuſtriſſimus attavus, Jacobus III. Dei Gratia Rex Scotorum, perennis memoriæ, per ſuas literas patentes, ſub ſuo magno ſigillo, de data, apud Edinburgh, vigeſimo octavo die menſis Maii, anno Domini milleſimo quadringenteſimo octogeſimo octavo, expeditas, pro cauſis inibi ſpecificat. dedit & contulit in quondam Alexandrum comitem de Glencairn, dominum Kilmauris, predeceſſorem prædilecti conſanguinei noſtri Willielmi, nunc comitis de Glencairn, titulum, honorem & dignitatem comitis de Glencairn, omni tempore a futuro nuncupandum, prout dictæ literæ patentes, de data prædict. latius proportant.* And therefore his Majeſty ratifies and approves the former Patent of King *James* III. and that it ſhall be a good, valid and ſufficient Title; *Unde præfatus Willielmus, nunc comes de Glencairn, hæredes ſui & ſucceſſores, omni tempore futuro, libere, quiete & pacifice præfatum honorem & dignitatem comitis fruentur & gaudebunt.* 3*tio*, From a Service and Retour in the Books of the Chancery, in the Year 1671, where *John* Earl of *Glencairn*, Father to the preſent Earl, is retoured neareſt and lawful Heir-male to the deceaſed *Alexander* Earl of *Glencairn*, his Brother-german, notwithſtanding that he left a Daughter, the Counteſs of *Lauderdale*, above-mentioned.

Earl of ROTHES.

This noble Family was raiſed to the Honour of Earl of *Rothes*, in the Perſon of *George* Lord *Leſly ſuper Leven*, as he is deſigned in an authentic Writ, dated the 10th of *January* 1459. *George* Earl of *Rothes* his Grandſon married *Ægidia* Daughter of *George* Earl of *Angus*, by whom he had a Daughter *Eliſabeth*, married to *William* Earl of *Errol*. He died in 1511, and was ſucceeded by *William Leſly* his Brother, not by the Counteſs of *Errol* his Daughter. This Earl was ſlain at *Floudon*, and was ſucceeded by Earl *George* his Son. This Inſtance is vouched, 1*mo*, From the Copy of an authentic Writing in the Hands of Mr. *James Leſly* Sheriff-Clerk of *Fife*, taken from the Earl of *Rothes*'s Charter-cheſt. 2*do*, From a Charter under the Great Seal, in the public Ar-

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chives, in the 1501, *Willielmo comiti de Errol, & Eliſabethæ Leſly ſponſæ ſuæ.* 3tio, From the Hiſtorical Collections relating to the Nobility of *Scotland*, in MSS. which belonged to the learned and ingenious Mr. *Dunlop* Principal of the College of *Glaſgow*, and is ſtill in the Cuſtody of Mr. *Dunlop* his Son; and with Mr. *Dunlop* concur ſeveral Collectors of the Antiquities and Deſcent of the Nobility of *Scotland*, that are in MSS. in the Lawyers Library, and formerly belonged to the learned Sir *Robert Sibbald* of *Kips*, M. D.

DITTO.

The Line of this noble Family was regularly carried down in a Succeſſion of Males, till the Earl of *Rothes*'s Time, who was afterwards Duke of *Rothes*. His Lordſhip having no Iſſue-male; and knowing for certain, that the Title, Honour and Dignity of the Earldom of *Rothes*, would not go to his Daughter, but deſcend to his Heir-male; therefore, to ſettle it in the Way and Manner he intended, he reſigned his Eſtate, heretable Sheriffſhip of *Fife*-Shire, *&c.* in Failure of the Iſſue-male of his own Body, in favours of his eldeſt Daughter, and ſeveral other Heirs of Tailzie therein ſpecified, together with the Title, Honour, Stile, Dignity and Precedency of Earl of *Rothes*; whereupon a Charter was expede in theſe Terms, under the Great Seal, by King *Charles* II. bearing Date the 4th of *July* 1663, in the public Archives, Part of which we ſhall here recite, for vouching the Alteration of the Succeſſion of the Honour of the Houſe of *Rothes*, from Heirs-male to the Heirs-female. *Carolus, &c. Sciatis nos dediſſe prædilecto conſanguineo noſtro Johanni comiti de Rothes, & hæredibus maſculis, de corpore ſuo legitime procreandis, quibus deficientibus, hæredi fœmelli, procreatis ſeu procreandis, de corpore dicti comitis, vel de corpore ejus hæredum maſculorum, abſque diviſione, totum & integrum, dicti comitis de Rothes, titulum, honorem, & dignitatem comitis de Rothes, domini Leſly, &c. una cum omnibus & ſingulis comitat. juris, &c. quæ quidem, honor, titulus, dignitas, integræ terræ, baroniæ, officium, ad*

præfatum

præfatum noſtrum conſanguineum, comitem de Rothes, perprius hæreditariæ pertinuerunt; and were duly reſigned by him. *Præterea, nos de novo damus prædilecto conſanguineo noſtro, Johanni comiti de Rothes, hæredibus ſuis maſculis, taliæ & proviſionis, comitis de Rothes titulum, dignitatem & præheminentiam, prout ipſe, ejuſque prædeceſſores gaviſi ſunt.*

Earl of ABERCORN.

This noble Family was firſt advanced to the Rank and Quality of Earls of *Abercorn*, in the Perſon of *James* Maſter of *Paiſley*, firſt raiſed to be Lord, and then Earl of *Abercorn*, in the Year 1606. There is no Patent upon Record, ſhewing to what Series of Heirs the Deſcent of the Honour was limited; yet in the Family there is an Inſtance, where an Heir-male excluded an Heir of Line in the Succeſſion to the Dignity: For *James* the third Earl of *Abercorn* died, leaving only one Daughter, Lady *Catharine Hamilton*, who was married to *John Lenthall* of *Burford*, of the County of *Oxford*, Eſq; yet his Couſin-German, and Heir-male, *Claud* Lord *Straband*, ſucceeded to the Honour and Dignity of Earl of *Abercorn*. This Inſtance is vouched, 1*mo*, From the *Peerage* of *Scotland*. 2*do*, From *Wood*'s *Athenæ Oxonienſes*, Vol. II. where the ingenious Author, treating on the Family of Sir *William Lenthall*, who was Speaker of the Houſe of Commons in the *Long Parliament*, ſays, That *John Lenthall* Eſq; Sir *William*'s Grandſon, married *Catharine*, a Daughter of the noble Family of *Hamilton* in *Scotland*, more particularly of thoſe of *Paiſley*: And every one knows, that the Title of the Earl of *Abercorn*'s eldeſt Son, is Lord *Paiſley* to this Day, tho' they have not had the Lordſhip of *Paiſley* ſince the Year 1652. 3*tio*, From a Memorial of the Deſcent of the Earls of *Abercorn*, from *Claud* Lord *Paiſley* their Anceſtor, till *James* the preſent Earl of *Abercorn*, his Lineal Heir-male, in MSS. in the Hands of Mr. *Crawford*, the Author of the *Peerage*.

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